IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

Crl.MC.No. 4371 of 2003()

CC.142/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

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PETITIONER:

P.M.ABRAHAM @ JOSE ABRAHAM
S/O. LATE THOMAS MATHEW, MELOOTTU ATTULYA BHAVAN,
KONNI.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. T.K.KURIAN, S/O. LATE T.P.KOSHY
THORAKATHU HOUSE, KAIPATTOOR MURI,
VALLIKODE VILLAGE.

2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH
SRI.V.RAMKUMAR NAMBIAR
SRI.SATHISH NINAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.M.C.No.4371 of 2003

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Dated this the 5th day of September, 2007

O R D E R

The petitioner, who is the accused in C.C.No.142/2003 in the file of the Judicial Magistrate of the First Class-II, Pathanamthitta, with respect to the offence under Section 420 I.P.C has sought for getting quashed the above proceedings.

2. The allegation of the de facto complainant is that the accused borrowed Rs.67,000/- on 28/08/1998 on executing a promissory note and that the said amount was not returned even after repeated requests. It is the contention that the offence is essentially in the nature of a civil dispute and as the time for limitation has expired to institute the civil suit, the criminal proceedings has been initiated.

3. I find that in Annexure-A copy of the complaint filed which was forwarded, it is mentioned that at the time of borrowal itself the accused had the intention to cheat the complainant and that he deliberately delayed on one pretext or the other till the matter got barred by limitation.

In the circumstances, I find that there is no ground for invoking Section 482 Cr.P.C. The petitioner may apply for discharge before the court below. If the petitioner/accused has not appeared before the court below, he is directed to surrender. It appears that there is no need for pre-trial detention. The counsel for the petitioner has sought for direction that he may be exempted from personal appearance. The petitioner may apply before the court below for the same and the court may consider the same. The Crl.M.C is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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